

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SHANE LEE SHEPLER,)	
Plaintiff,)	Civil Action No. 13-521
)	
v.)	District Judge Cathy Bissoon
)	Magistrate Judge Cynthia Eddy
JEFFERSON COUNTY JAIL BROAD)	
MEMBER, <i>et al.</i> ,)	
Defendants.)	

MEMORANDUM ORDER

On April 11, 2013, this case was referred to United States Magistrate Judge Cynthia Eddy for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.C, 72.D and 72.G of the Local Rules for Magistrates. On December 11, 2013, the magistrate judge issued a Report and Recommendation (Doc. 37) recommending that Defendants' Motion to Dismiss (Doc. 27) be granted with prejudice with respect to Plaintiff's failure to protect claim and granted without prejudice with respect to Plaintiff's condition of confinement claim. It was further recommended that Plaintiff be given thirty (30) days to amend his complaint with respect to his condition of confinement claim. Service of the Report and Recommendation was made on the parties and Plaintiff did not file objections.¹

After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 13th day of January, 2014,

¹ On January 10, 2014, Plaintiff filed a Motion for a Hearing (Doc. 39). In his Motion, Plaintiff requests a hearing to "show how the Jefferson County Jail Board and Warden Thomas Elbel violated my constitutional rights[.]" The Court does not construe Plaintiff's Motion as timely filed Objections as Plaintiff does not reference the December 11, 2013 Report and Recommendation in his filing. Instead, Plaintiff moves for a hearing to offer testimony of alleged witnesses.

IT IS HEREBY ORDERED that the December 11, 2013 Report and Recommendation (Doc. 37) is adopted as the opinion of the Court. Defendants' Motion to Dismiss (Doc. 27) is granted with prejudice with respect to Plaintiff's failure to protect claim and granted without prejudice with respect to Plaintiff's condition of confinement claim. Plaintiff is granted leave until February 14, 2014, to file an amended complaint to plead sufficient facts to state an Eighth Amendment claim with respect to the following two allegations: (i) that he developed a staph infection as a result of using improperly sanitized razors and nail clippers (ii) that he was denied access to water and restroom facilities during mandatory recreation time. In addition, Plaintiff's Motion for a Hearing (Doc. 39) is denied.

s/ Cathy Bissoon
Cathy Bissoon
United States District Judge

cc:

All attorneys of record (via CM/ECF e-mail).

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